THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

WRIT PETITION No.5713 of 2005

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% 28.04.2005

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Talachintala Paidayya, S/o Late Thavitayya

…Petitioner

Vs.

$ 1. Toleti Jeevaratnam, S/o Late amayya,
and 8 others.

….Respondents

Counsel for the Petitioner: **MR.V.RAGHU**

Counsel for the Respondents: **GP FOR PANCHAYAT RAJ & RURAL DEV.**

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- Head Note:

? Cases referred:

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY EIGHTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO: 5713 of 2005

Between:

Talachintala Paidayya, S/o Late Thavitayya,
R/o S.C. Colony, Rajam, Srikakulam District.

... PETITIONER

AND

1 Toleti Jeevaratnam, S/o Late amayya,
R/o S.C. Colony, Raja, Rajam Mandal, Srikakulam District.
2 Uppada Eswararao, s/o Veeraswamy,
R/o S.C. Colony, Raja, Rajam Mandal, Srikakulam District.
3 Golla China Ramaiah, S/o Late Chinodu,
R/o S.C. Colony, Raja, Rajam Mandal, Srikakulam District.
4 Nakka Srinivasa Rao, s/o Adiramulu,
R/o Mallikharjuna Colony, Rajam Mandal, Srikakulam District.
5 Pakki Velangani Raju, S/o Sundararao,
R/o Mallikharjuna Colony, Rajam Mandal, Srikakulam District.
6 The District Collector, Srikakulam cum District Election

Authority, Srikakulam District.
7 The Election Officer, Rajam Gram Panchayat, P. Rama Rao, age

50 years, Palakonda Manda, Srikakulam District.
8 The Mandal Development Officer, Mandaloa Prajaparisat,
Rajam Mandal, Rajam, Srikakulam District.
9 The Deputy District Election Authority Cum Revenue Divisional

Officer, Palakonda, Srikakulam District.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ Order or direction particularly one in the nature of Writ of Certiorari declaring the order of the election tribunal cum Junior Civil Judge at Rajam dt. 9-3-2005 in E.O.P.No. 9/2001 as illegal, arbitrary and contrary to law and consequently set aside the same.

Counsel for the Petitioner: MR.V.RAGHU

Counsel for respondent No.1: Mr. D. Ramalinga Swamy, Caveator for R-1

Counsel for respondents 2 to 5 and 9: Mr. K. G. K. Prasad,

Counsel for respondent No.6: G.P. FOR PANCHAYAT RAJ & RURAL DEV.

Counsel for respondents 7 & 8: Mr. Srinivas Dammalapati

The Court made the following:

ORDER:

Petitioner and respondents 1 to 5 contested the Gram Panchayat elections, whereat the Election Officer (7th respondent) declared the petitioner as elected. Aggrieved thereby, first respondent filed

Election O.P. No. 9 of 2001 before the Election Tribunal questioning the election of

the petitioner. After evidence was adduced by both sides, the Election Tribunal ordered recount of the votes. Questioning the said order of the Election Tribunal, petitioner, who is the first respondent before the Election Tribunal, preferred this writ petition.

(2) Heard both sides.

(3) The admitted case is during the initial counting, first respondent herein i.e. the petitioner before the Election Tribunal is said to have polled more votes than the petitioner. When the petitioner sought a recount, 7th respondent ordered a recount and during that recount petitioner is found to have got 4 votes more than the 1st respondent and was declared elected. As per Rule 35 of the Andhra Pradesh Panchayat Raj (Conduct of Elections of Members and Sarpanch of Gram Panchayat, Members of Mandal Parishad and Members of Zilla Parishad) Rules, 1994 (for brevity 'the Rules), every decision of the Election Officer, under sub-rule (2), for recount shall be in writing and contain reasons therefor. From the judgment of the Election Tribunal it is seen that 7th respondent did not pass any order in writing containing the reasons for recount.

In Para 18 of the judgment, the Tribunal held:

> " R-7 to R-9 documents it clearly reveals that the Election Officer, without filling the columns mentioning the votes secured by each candidate, in the recounting, he simply declared R-1 as elected candidate of recounting without put his initial at the correction portion on Ex.R-8 the Election Officer simply put his signature on R-8 by round off the votes secured by the candidates No.3 and 4, i.e. petitioner and R-1, on Ex.R-8".

As per Rule 35 of the Rules, recording of the reasons for ordering a recount by the Election Officer is mandatory. In this case, there is no order in writing by the 7th respondent for a recount. Thus there is clear breach of Rule 35 of the Rules.

(4) In the above circumstances, the Tribunal ordering recount cannot be said to be erroneous, and so I find no merits in the writ petition.

(5) Accordingly, the writ petition is dismissed. No costs.

C.Y. SOMAYAJULU, J

April 28, 2005

Note: L.R. Copy to be marked

(B/o)

MRR

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

Copy to. –

One fair copy to the Hon'ble Mr Justice C.Y.Somayajulu (For his lordships kind perusal)

1. The District Collector, Srikakulam cum District Election

Authority, Srikakulam District.
2. The Election Officer, Rajam Gram Panchayat, P. Rama Rao, age

50 years, Palakonda Manda, Srikakulam District.
3. The Mandal Development Officer, Mandaloa Prajaparisat,
Rajam Mandal, Rajam, Srikakulam District.
4. The Deputy District Election Authority Cum Revenue Divisional

Officer, Palakonda, Srikakulam District.

5. Two CCs to GP for Panchayat Raj & Rural Development, High Court buildings,

Hyderabad.(OUT)

6. Two CD copies.

7. The Under Secretary, Union of India, Ministry of Law, Justice & Company Affairs, New Delhi.

8. The Secretary, AP Advocates' Association Library, High Court buildings, Hyderabad.

9. 8 LR copies.